

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

RICHARD DASCHBACH
individually and on behalf of all
others similarly situated,

Plaintiff,

v.

ROCKET MORTGAGE, LLC,

Defendant.

CASE NO. 1:22-cv-00346-JL

March 1, 2023

RESPONSE TO PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY

By Its Attorneys,

/s/ W. Kyle Tayman

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Rocket Mortgage, LLC (“Rocket Mortgage”) submits this response to Plaintiff Richard Daschbach’s Notice of Supplemental Authority, dated February 28, 2023 (ECF No. 25), which attached an opinion issued on February 28, 2023, in *Williams v. DDR Media, LLC, et al.*, Case No. 3:22-cv-03789-SI (N.D. Cal. Feb. 28. 2023).

Williams is readily distinguishable and of no aid to Plaintiff. First, the court denied the motion to compel arbitration because the defendant had not shown that the plaintiff had manifested assent to the website’s term and conditions. There, the website’s disclosure stated that the user agreed to the terms and conditions (and associated arbitration clause) by clicking the “Get Started” button. But there was no “Get Started” button on the website—the button following the disclosure was instead a “Check Listings” button. ECF No. 25-1 at p. 11. Further, the court held that defendants did not meet their burden to show that the plaintiff had assented to the terms because “defendants have not submitted any evidence showing Williams actually clicked the check listings button.” ECF No. 25-1 at p. 13.

In contrast, Rocket Mortgage submitted evidence (undisputed by Plaintiff) that Daschbach twice clicked the green submission button labeled “See my results,” and thus twice assented to the terms and conditions of the refinance.enhancedrefinow.com website. ECF No. 15-2, ¶¶ 8, 15-16, 20-21; ECF No. 15-11 pp. 2 and 6; ECF No. 15-12 pp. 2 and 6. And unlike in *Williams*, displayed immediately below the “See my results” button was a conspicuous express disclosure providing that “[b]y clicking the button above, you express your understanding and consent, electronically via E-Sign ... [t]o the LMB Lending **Terms of Use**.” ECF No. 15-11 p. 6; ECF No. 15-12 p. 6.

Second, the *Williams* Court held inquiry notice was lacking because the disclosures were buried in a paragraph of non-offsetting text, “further deemphasized by the overall design of the webpage, in which other visual elements” of text and images to the left and photographs

underneath the disclosures “draw the user’s attention away” from the textual notice. ECF No. 25-1 at p. 7. The Court also found the terms of use hyperlink was in the same color font as the surrounding text, not underlined, not in contrasting blue font, and thus not “conspicuously distinguished.” *Id.* at 8-9. In contrast, the disclosures on refinance.enhancedrefinow.com were broken up into discrete, easy-to-follow enumerated and readable subparts, and the Terms of Use hyperlink appeared in blue font, underlined, and readily distinguished from the surrounding font. ECF No. 15-11 p. 6; ECF No. 15-12 p. 6.

Accordingly, *Williams* is inapposite and does not change that arbitration should be compelled because Rocket Mortgage has submitted evidence of Daschbach’s unambiguous assent and reasonable notice to the LMB Terms of Use, which require mandatory arbitration. ECF No. 15-1 at ¶ 26; ECF No. 15-6.

March 1, 2023

Respectfully submitted,

/s/ W. Kyle Tayman

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CERTIFICATE OF SERVICE

I, W. Kyle Tayman, certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 1, 2023.

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